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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 WESTERN DIVISION

22 NICOLAS TORRENT, on Behalf of
23 Himself and All Others Similarly
24 Situated,

25 Plaintiff,

26 vs.

27 YAKULT U.S.A., Inc.,

28 Defendant.

No. 8:15-cv-00124-CJC-JCG
CLASS ACTION

**PLAINTIFF'S REPLY IN SUPPORT
OF MOTION TO DISMISS**

Date/Time: August 29, 2016/1:30 p.m.
District Judge: Hon. Cormac J. Carney
Courtroom: 9B
Trial Date: Jan. 10, 2017

As Defendant, Yakult U.S.A., Inc. acknowledges in its opposition [Dkt. 68], Federal Rule of Civil Procedure 41(a)(2) authorizes the Court to dismiss the case “on terms that the court considers proper.” Accordingly, and in the alternative to dismissal based on lack of subject matter jurisdiction, the action should be dismissed with prejudice under Rule 41(a)(2), given the Court’s prior ruling that Plaintiff lacks standing to seek injunctive relief, which effectively precludes him from obtaining the relief sought through this action. *See, e.g., Chang v. Pomeroy*, Case No. CIV S-08-0657-FCD-DAD-PS, 2011 WL 618192 (E.D. Cal. Feb. 10, 2011) (“Dismissal pursuant to Rule 41(a)(2) should be granted unless the defendant can show that it will suffer some clear legal prejudice as a result.” (citing *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001))).

DATED: August 15, 2016

/s/ Cullin O’Brien

Cullin O’Brien

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